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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,769	09/15/2003	Adam Grablick	6226US	1483
30173	7590	06/21/2006	EXAMINER	
GENERAL MILLS, INC.			FIDEI, DAVID	
P.O. BOX 1113			ART UNIT	
MINNEAPOLIS, MN 55440			PAPER NUMBER	
			3728	

DATE MAILED: 06/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/662,769	<b>Applicant(s)</b> GRABLICK, ADAM	
	<b>Examiner</b> David T. Fidei	<b>Art Unit</b> 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-26 and 37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 37 is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1 the non-adhesive layer is recited as formed "of a material including at least one of sheet paper and sheet plastic". It is not clear if "at least one" extends to only one of the terms, i.e., the sheet paper and the sheet plastic, or if "at least one extends" to both of the terms. Although not material, in the Examiners' opinion, to present patentability issues the subject matter requires correction for record clarity.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:  
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
4. Claims 1-11 and 14-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP document 0 560 374 A2 (Koster) in view of Hendricks et al (Patent no. 3,389,784). In figures 1-5 a consumer product display is disclosed comprising a display strip broadly shown as 1 divided into a lower section and an upper section. A hanging means 8 is disclosed along with lower section having a front face with an affixing means 2, 3 as shown in the various figures. A plurality of consumer products "Z" are attached thereto. The difference between the newly added

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subject matter and Koster resides in a non-adhesive layer and an exposed adhesive recessed relative to the non-adhesive layer.

Hendricks et al deals with a similar problem as that confronted by applicant where the invention is to provide a controlled degree of adherence, see col. 1, lines 45-51. This is accomplished by providing less than full adherence to the product, i.e., the adhesive area being less than the article footprint, see col. 2, lines 54-62. It would have been obvious to one of ordinary skill in the art to modify the display device of Koster by employing non-adhesive layer and an exposed adhesive recessed relative to the non-adhesive layer as taught by Hendricks for the aforementioned motivational reasons. Also, providing a recessed adhesive surface also manifestly prevent inadvertent adherence of the adhesive to any object on the front face of the strip.

As to claim 2, the lower section of the front face defines a plurality of discrete product affixing areas, each characterized by the exposed adhesive as shown in figures 1, 4 and 5.

Regarding claims 3 and 25, the surface area of the front face or length of the display strip is not known however, such a modification over any disclosure of Koster would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). Also, it has been held that where the only difference between the prior art device and the claimed device was a recitation of relative dimensions, the claimed device was not patentably distinct from the prior art device, Gardner v. TED Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. Denied, 469 U.S. 830, 2325 USPQ 232 (1984), see M.P.E.P. 2144.04 (IV).

As to claim 4, the plurality of discrete product affixing areas is configured to provide an exposed adhesive surface area that is less than the product footprint.

As to claim 5, it would have been obvious to one of ordinary skill in the art to the product display with discrete product affixing areas to establish a peel strength that is less than maximum force of the package as a matter of common sense.

As to claims 6-10, a product is shown in Hendricks et al as candy in figure 9 that includes indicia which defines conventional viewing orientation, has a major and minor axis,

As to claims 11 and 24, a hole is defined by member 8.

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As to claims 14-21, template strip 38 defining a front face, a back face, an upper portion and a lower portion; and a carrier strip 32 defining a front face and a back face, the front face of the carrier strip being covered with an adhesive 34; wherein the front face of the carrier strip 32 is adhered to the back face of the template strip 38 such that at least a portion of the adhesive 34 remains exposed relative to the template strip to define an exposed adhesive, see figure 6.

Hendricks et al also discloses a wide variety of shapes and sizes in the template openings forming the exposed adhesive regions. In the present case, the particular shape of the openings in claims 17-20 are considered a matter of design choice dependent the article and degree of contact desired. Hendricks et al also discloses a pressure sensitive adhesive 34, col. 2, line 47

Regarding claims 22 and 23, the thickness of the template is not known however, such a modification over any disclosure of Hendricks et al would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). Also, it has been held that where the only difference between the prior art device and the claimed device was a recitation of relative dimensions, the claimed device was not patentably distinct from the prior art device, Gardner v. TED Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. Denied, 469 U.S. 830, 2325 USPQ 232 (1984), see M.P.E.P. 2144.04 (IV).

As to claim 24, the upper portion of Koster includes a hole at 8.

As to claim 26, Official Notice is taken for the use of indicia on such card for advertisement, promotional or product information content. It would have been obvious to one of ordinary skill in the art to the consumer display of Koster by including indicia in area 9 in view of Official Notice, in order to provide information conveying the product content.

5. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP document 0 560 374 A2 (Koster) in view of Hendricks et al (Patent no. 3,389,784) as applied to the claims above, and further in view of Larson (Patent no. 3,458,037). The difference between the claims and Koster resides in the hanging means including a fold line formed in the upper section such that the upper section defines a leading free edge above the fold line; a first hole formed in the upper section above the fold line; and a second hole formed in the upper section below the fold line; wherein the first hole and the second hole are located relative to each other

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such that when the upper section is in an unfolded state the holes are linearly aligned perpendicular to the fold line and separated equidistant to the fold line, and when the upper section is in a folded state, the leading free edge is folded to the back face whereby the first hole and the second hole form a continuous hole through the upper section.

Larson teaches a product display in figure 4 where an upper section of card 12 includes a fold line 13 with a hole 18 formed in the upper section above the fold line; and a second hole also 18 formed in the upper section below the fold line; wherein the first hole and the second hole are located relative to each other such that when the upper section is in an unfolded state the holes are linearly aligned perpendicular to the fold line and separated equidistant to the fold line, and when the upper section is in a folded state, the leading free edge is folded to the back face whereby the first hole and the second hole form a continuous hole through the upper section, see figure 1. It would have been obvious to one of ordinary skill in the art to modify the hanging means of Koster by employing such an arrangement as taught by Larson, in order to provide a stronger, more reinforced top section for displaying the products.

As to claim 13, the leading edge is panel 12 and 16 are secured at 52, 53.

#### ***Allowable Subject Matter***

6. Claim 37 is allowed.
7. The following is a statement of reasons for the indication of allowable subject matter: The combination of claim 37 includes a "carrier strip adhered to the back face of the template strip over the free edge of the upper section to secure the free edge against the back face of the template strip" that is not taught or suggested in the claimed combination.

#### ***Response to Arguments***

8. Applicant's arguments filed April 30, 2006 have been fully considered but they are not persuasive to the rejection as applied above.

At the outset Applicants' clarification of the claims withdrawn as a result of the restriction requirement is appreciated. Since allowable subject matter is indicated herein, the

restriction requirement is withdrawn. Applicant may, if so desired, draft method claims operatively including all of the product structure indicated allowable. The presumption being that since all the indicated product structure is allowable, any proper statutory method incorporating that subject matter should also be allowable.

Applicants' clarification of Koster comprising adhesive protruding from the backing which support rectangular boxes is greatly appreciated. Claim 1 as amended has been changed to reflect the adhesive is recessed relative to the non-adhesive layer. While it is acknowledged Koster fails to disclose a display strip with adhesive arranged relative to the non-adhesive layer in this manner, it is not agreed one skilled in the art would be motivated to modify Koster to incorporate such limitations.

As noted above Hendricks et al is extremely pertinent in dealing with a similar problem as that confronted by applicant where the invention is to provide a controlled degree of adherence, see col. 1, lines 45-51. This is accomplished by providing less than full adherence to the product, i.e., the adhesive area being less than the article footprint, see col. 2, lines 54-62. Also, one can readily envision the problems of an exposed adhesive from a practical standpoint. Such an exposed pressure sensitive material would have the propensity to inadvertently adhere to any object upon contact. This is recognized by those skilled in the art where coated release paper is conventionally used to obscure the tacky material. It also appears a recessed adhesive surface would also offer such an advantage relative to the non-adhesive layer. In view of these considerations, it is submitted there is established an explicit and implicit suggestion, motivation or reasons to modify Koster in the manner proposed.

With regard to claim 14, nothing is seen described therein that distinguishes over the prior art as explained above. In as much as is claimed the template and carrier strip merely set forth layers of the product display device. It is not also entirely agreed Hendricks fails to teach discrete affixing areas of substantially the same size and shape. At least in part with reference to figures 5 there are a plurality of discrete product affixing areas 40 that appear to be circular shapes of similar size. All that is required of the claim is that the areas exhibit this construction, not that all of the areas of strip are exclusively of the same size and shape. Even if the claim construction were viewed as such, references are not evaluated like "blueprints". Rather it is what the combination suggests to one skilled in the art. As such it would appear frivolous to grant

patents each time someone employed a different arrangement of shape or sized adhesive surfaces in a carrier strip. The prior art seems to suggest otherwise.

It is agreed new claim presents limitations not present in the prior art.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. The examiner can normally be reached on Monday - Thursday 6:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 2724562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David P. Fidei  
Primary Examiner  
Art Unit 3728

Dtf  
June 15, 2006